

BEFORE THE
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
DOCKET NO. 2019-130-E

IN RE:

Ecoplexus Inc.

Complainant,

V.

South Carolina Electric & Gas Company,

Defendant.

**RESPONSE IN OPPOSITION TO
PETITION FOR REHEARING OR
RECONSIDERATION OF ORDER
NO. 2019-293**

This matter comes before the Public Service Commission of South Carolina (“Commission”) pursuant to Beulah Solar, LLC’s (“Beulah”) and Eastover Solar LLC’s (“Eastover”) (Beulah and Eastover, collectively, the “Petitioners”) Petition for Rehearing or Reconsideration of Order No. 2019-293 (the “Petition”) (attached as Exhibit A), filed in the above-referenced docket on May 6, 2019. The Petition seeks to separate the resolution of three aligned Motions to Maintain Status Quo where the Petitioners and Ecoplexus Inc. (“Ecoplexus”) each failed to make the requisite milestone payments under their respective interconnection agreements, and the interconnection agreements automatically terminated. For the reasons set forth below, Dominion Energy South Carolina, Inc. (formerly South Carolina Electric & Gas Company) (“DESC”) responds in opposition to the Petition and respectfully requests that the Petition be denied.

BACKGROUND

The Commission's Order No. 2019-293 (the "Order") (attached as Exhibit B), issued in the above-referenced docket on April 24, 2019, consolidated two dockets—2019-130-E (the "Ecoplexus Docket") and 2018-401-E (the "Beulah and Eastover Docket"). The newly-consolidated docket contains three pending Motions to Maintain Status Quo (the "Ecoplexus Motion," "Beulah Motion," and "Eastover Motion," respectively).

I. The Ecoplexus Docket.

On April 15, 2019, Ecoplexus filed the Ecoplexus Motion with the Commission in the Ecoplexus Docket (attached as Exhibit C). ***Identical*** to the Beulah Motion and the Eastover Motion, the Ecoplexus Motion sought to avoid the inevitable termination of interconnection agreements after Ecoplexus failed to make the first milestone payments owed to DESC under those interconnection agreements (the "Ecoplexus IAs"). The Ecoplexus IAs were executed with DESC on February 11, 2019. Only 45 days later, the first milestone payments owed to DESC under the Ecoplexus IAs became due. One day prior to the deadline, Ecoplexus sought to "stay" its obligation to make a payment through filing of the Ecoplexus Motion and corresponding Complaint.

Ecoplexus chose not to make its first milestone payment under each Ecoplexus IA, as required by Section 5.2.4 of the South Carolina Generator Interconnection Procedures, Forms, and Agreements ("South Carolina Standard") and the Ecoplexus IAs, all as more fully detailed in DESC's Response in Opposition to Motion to Maintain Status Quo filed in the Ecoplexus Docket on April 24, 2019 (attached as Exhibit D). As with Beulah and Eastover, and as a result of these missed milestone payments, the Ecoplexus IAs terminated automatically pursuant to the South Carolina Standard and the terms of the Ecoplexus IAs.

II. The Beulah and Eastover Docket.

a. Beulah

On December 28, 2018, Beulah filed the Beulah Motion with the Commission in the Beulah and Eastover Docket (attached as Exhibit E). **Identical to the Ecoplexus Motion and the Eastover Motion**, Beulah requested that the Commission stay its obligations to make its first milestone payment under the interconnection agreement executed with DESC on September 24, 2018 (the “Beulah IA”), pending the Commission’s resolution of the corresponding Request for Modification filed simultaneously therewith. To date, the Commission has ruled on neither the Request for Modification nor the Beulah Motion. Like Ecoplexus, Beulah chose not to make its first milestone payment, as required by South Carolina Standard and the Beulah IA, all as more fully detailed in DESC’s Response in Opposition to Motion to Maintain Status Quo filed in the Beulah and Eastover Docket on January 7, 2019 (attached as Exhibit F). As with Ecoplexus and Eastover, and as a result of the missed milestone payment, the Beulah IA terminated automatically pursuant to Section 5.2.4 of the Procedures of the South Carolina Standard and the terms of the Beulah IA.

b. Eastover

On January 24, 2019, Eastover filed the Eastover Motion with the Commission in Docket No. 2019-51-E (the “Eastover Docket”) (attached as Exhibit G). **Identical to the Ecoplexus Motion and the Beulah Motion**, Eastover requested that the Commission stay its obligations to make the first milestone payment under the interconnection agreement executed with DESC on November 13, 2018 (the “Eastover IA”) (Ecoplexus IAs, Beulah IA, and Eastover IA are collectively referred to as the “IAs”), pending the Commission’s resolution of the corresponding Request for Modification filed simultaneously therewith. To date, the Commission has ruled on neither the Request for Modification nor the Eastover Motion. Eastover also chose not to make its first milestone payment, as required by the South Carolina Standard and the Eastover IA, all as more fully detailed in DESC’s Response in Opposition to Motion to Maintain Status Quo filed

in the Eastover Docket on February 1, 2019 (attached as Exhibit H). As with Ecoplexus and Beulah, and as a result of the missed milestone payment, the Eastover IA terminated automatically pursuant to Section 5.2.4 of the Procedures of the South Carolina Standard and the terms of the Eastover IA.

c. Consolidation of the like Motions

Eastover, Beulah, and DESC filed a Joint Motion to Consolidate on February 4, 2019 (attached as Exhibit I). In doing so, the parties petitioned the Commission to consolidate the Beulah and Eastover matters because they each “have common and aligned interests and are both seeking common, affirmative relief in this matter . . . [t]he Parties therefore move to combine these two Proceedings for judicial economy and to avoid duplicative discovery.” Joint Motion to Consolidate at page 2. The Commission granted consolidation of these dockets in Order 2019-13-H (attached as Exhibit J), creating the Beulah and Eastover Docket.

III. Consolidation of the Ecoplexus Docket and the Beulah and Eastover Docket.

In consolidating the Ecoplexus Docket with the already-consolidated Beulah and Eastover Docket, the Commission cited the “great similarity of the issues, facts, and arguments presented” in each matter, because each “solar developer [has] raised objections to reasons why it should not have to complete a milestone payment to [DESC].” The Order at ¶ 1 and ¶ 3. The Commission further noted, “[a]pparently, the deadline for payment has allegedly passed, and the parties now disagree on the implications of that fact . . . These issues are complex and have the potential to affect other solar developers that are waiting in the queue for similar action.” The Order at ¶ 2. Resolution of all three similar Motions for Status Quo would also result in “judicial efficiency.” The Order at ¶ 3.

Now, Beulah and Eastover claim in the Petition that the Commission improperly consolidated these dockets and request a rehearing or reconsideration of the Order. The Petition

alleges, contrary to the Commission’s express finding of “great similarity” in the dockets, that the Ecoplexus Docket and the Beulah and Eastover Docket:

(i) do not share common/similar questions of law or fact (or if they do, it is only to a very limited extent and the dissimilar issues of law and fact vastly outnumber and outweigh any similar ones); (ii) do not have common and aligned interests; and (iii) do not seek common relief.

Petition at page 1 (emphasis in original).

The Commission has yet to rule on the Petition, and DESC now responds in opposition to the Petition.

STANDARD OF REVIEW

The Commission’s review of the Petition is governed by S.C. Code Ann. Reg. 103-825(4), which requires the Petition to:

[s]et forth clearly and concisely:

- (a) The factual and legal issues forming the basis for the petition;
- (b) The alleged error or errors in the Commission order;
- (c) The statutory provision or other authority upon which the petition is based.

Indeed, the Commission itself stated that “[c]onclusory statements and general and non-specific allegations of error do not satisfy the requirements of the rule.” *Friends of the Earth and Sierra Club*, Docket No. 2017-207-E, Order No. 2019-122, at page 3. Thus, the burden to reverse an order of the Commission through rehearing is high and must rest upon “error” based in statutory provision or other authority—this burden is not met by Petitioners’ request.

ARGUMENT

I. Petitioners’ argument that the Commission wrongly found “great similarity” in the dockets is misplaced and without statutory or other support.

Bluntly—Petitioners fail to cite an error by the Commission in the Commission’s appropriate action in consolidating the dockets. The Petitioners wrongly attempt to attack the Commission’s reasoning underlying the Order, where, as discussed above, the Commission

decided that “[there is] great similarity of the issues, facts, and arguments presented” in these dockets. The Order at ¶ 3. This argument is undone not only by the Commission’s well-reasoned Order, but also by the Petitioners’ own argument that “**this Commission has not made the decision that the Interconnection Agreements of any of the three parties, [sic] have been terminated.**” Petition at page 3 (emphasis in original). Indeed, Petitioners cite to the very issue for which the dockets were consolidated—that is, each party contests the validity of a missed milestone payment and the subsequent ramifications of that missed payment. Put another way, the Commission can resolve a major issue (validity of termination of the IAs) in each of these dockets with one decision—the very definition of “judicial efficiency” cited by the Commission that the Petitioners refute. The Order at ¶ 3.

As further described above, common issues include, but are not limited to:

- i. Beulah and Eastover filed a Motion to Maintain Status Quo with the Commission just prior to the due date of their first milestone payments. **Ecoplexus did the same.**
- ii. Beulah and Eastover failed to pay the milestone payments owed under those interconnection agreements, citing the Commission’s pending resolution of a disputed term or condition contained in its IA. **Ecoplexus did the same.**
- iii. As a result, each of Beulah and Eastover argued that its obligation to pay a milestone payment was tolled simply by filing with the Commission. **Ecoplexus did the same.**
- iv. The Beulah IA and Eastover IA each terminated pursuant to its terms and the Procedures of the South Carolina Standard, and each disputed the validity of that termination. **Ecoplexus did the same.**

Counter to what Petitioners argue in Paragraph 1 of the Petition, each docket seeks common relief through the Motions to Maintain Status Quo—a declaration by the Commission that the IAs remain in effect, while indefinitely tolling obligations to pay milestone payments.

II. Petitioners seek common relief—a retroactive stay and waiver of the mandatory requirement to make these milestone payments.

Petitioners assert they do not seek common relief. While Petitioners do wish for the Commission to review and modify additional terms in each of the IAs that are unrelated to these milestone payments, Petitioners and Ecoplexus most certainly want the Commission to waive the mandatory terms of Section 5.2.4 of the Procedures of the South Carolina Standard and the terms of their respective IA requiring termination for failure to make the required milestone payments. As explained above, Petitioners and Ecoplexus each filed Motions to Maintain Status Quo in the week prior to the due date for their first milestone payments (with Ecoplexus filing on the eve of the due date), did not receive a stay, and failed to make those payments. For these solar developers to have valid IAs, the Commission will have to grant a stay retroactively to each solar developer, waive each of the mandatory milestone payment requirements, and revive each of the expired IAs. The common relief sought could not be clearer. While there may be additional items on each developer's wish list, it does not negate the common relief sought, or prevent the Commission from deciding the common issues.

III. The Commission is well within its power to decide certain common issues for judicial efficiency.

Petitioners seem to artificially restrict the Commission's power to decide these common issues. Surely, Petitioners would concede that the Commission would be well within its province if it ruled that each IA was either (i) still in force, notwithstanding the missed payments, or (ii) terminated as a result of the missed payments, and then, in each case, separately resolved the remaining issues in the respective dockets.

Indeed, Petitioners advance no support for their argument that, because there are multiple other points at issue in these dockets, the Commission cannot rule on the common issue identified by the Commission—implications of missed milestone payments on the underlying IA. In addition to assigning no legitimate error to the Commission, Petitioners cannot overcome the plain language of Rule 42(a) of the South Carolina Rules of Civil Procedure, which states that the Commission “may order a joint hearing or trial of any or all matters in issue in the action . . . and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delays.” (emphasis added).

Critically, Petitioners make no argument as to why the Commission’s decision would not advance the goal of “judicial efficiency” cited by this Commission in the Order, other than making a bald assertion in the last sentence of the Petition’s summary. The support for that assertion is glaringly absent. Indeed, Petitioners merely assert conclusory statements, which are insufficient—as made clear by this very Commission—to meet the high burden to reverse the Order, as detailed above.

CONCLUSION

The Commission was correct in finding that there are common issues of both law and fact. Additionally, the Commission was correct in finding that consolidating Petitioners’ and Ecoplexus’ Motions to Maintain Status Quo will support judicial efficiency. For the aforementioned reasons, DESC respectfully asks the Commission to deny the Petition.

Respectfully Submitted,

/s/ J. Ashley Cooper _____
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Cayce, South Carolina
May 20, 2019

**BEFORE THE
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
DOCKET NO. 2019-130-E**

IN RE:)	
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)	
Ecoplexus Inc.)	
)	
Complainant,)	
)	CERTIFICATE OF SERVICE
v.)	
)	
South Carolina Electric & Gas Company,)	
)	
Defendant.)	

This is to certify that I, Ashley Cooper, have this day caused to be served upon the persons named below the ***Response in Opposition to Petition for Rehearing or Reconsideration of Order No. 2019-293*** by electronic mail and by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

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/s/ J. Ashley Cooper

This 20th day of May, 2019